

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
 )  
Republican National Committee )  
and Michael L. Retzer, as treasurer )

MUR 5197

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**CONCILIATION AGREEMENT**

This matter was initiated by a signed, sworn, and notarized complaint by John Berthoud, President of the National Taxpayers Union, and on the basis of information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that the Republican National Committee and Michael L. Retzer, as treasurer ("Respondents"), violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 104.8(e).

NOW, THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

1 III. Respondents enter voluntarily into this agreement with the Commission.

2 IV. The pertinent facts in this matter are as follows:<sup>1</sup>

3 1. The Republican National Committee is a political committee within the meaning of  
4 2 U.S.C. § 431(4).

5 2. Michael L. Retzer is the treasurer of the Republican National Committee.

6 3. The Federal Election Campaign Act of 1971, as amended ("the Act"), prohibits "any  
7 corporation organized by authority of any law of Congress" from making "a contribution or  
8 expenditure in connection with any election to any political office." 2 U.S.C. § 441b(a). The  
9 Act also prohibits "any candidate, political committee, or other person" from knowingly  
10 accepting or receiving "any contribution prohibited by this section." *Id.* The Federal National  
11 Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation  
12 ("Freddie Mac") are corporations organized by authority of laws of Congress, 12 U.S.C. § 1716  
13 *et seq.* and 12 U.S.C. § 1451 *et seq.*, respectively.

14 4. For purposes of Section 441b, the terms "contribution" and "expenditure" include  
15 "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any  
16 services, or anything of value . . . to any candidate, campaign committee, or political party or  
17 organization, in connection with any election to any of the offices referred to in" Section 441b.

18 5. The Act excludes from the definition of contribution:

19 any gift, subscription, loan, advance, or deposit of money or anything of  
20 value to a national or a State committee of a political party specifically  
21 designated to defray any cost for construction or purchase of any office

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<sup>1</sup> All of the facts recounted in this agreement occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Federal Election Campaign Act of 1971, as amended (the "Act"), herein are to the Act as it read prior to the effective date of BCRA and all citations to the Commission's regulations herein are to the 2002 edition of Title 11, Code of Federal Regulations, which was published prior to the Commission's promulgation of any regulations under BCRA. All statements of the law in this agreement that are written in the present tense shall be construed to be in either the present or the past tense, as necessary, depending on whether the statement would be modified by the impact of BCRA or the regulations thereunder.

1 facility not acquired for the purpose of influencing the election of any  
2 candidate in any particular election for Federal office.

3  
4 2 U.S.C. § 431(8)(B)(viii). This is the so-called "building fund exemption." *See, e.g.*, Advisory  
5 Opinions 2001-12, 2001-1, 1998-8, 1998-7, 1997-14, and 1983-8. Funds falling under the  
6 building fund exemption are exempt from the prohibitions of 2 U.S.C. § 441b. *See* 11 C.F.R.  
7 § 114.1(a)(2)(ix); Advisory Opinions 2001-12, 2001-1, 1998-8, 1998-7, 1997-14, 1983-8, and  
8 1979-17. Therefore, national and state committees of political parties may accept donations  
9 covered by the building fund exemption from corporations organized by authority of any law of  
10 Congress. *See id.*

11 6. Respondents deposited \$50,000 of Fannie Mae's contributions to the Republican  
12 Governors Association into a Republican National Committee non-federal account, the  
13 Republican National State Elections Committee, which might have been used to support state or  
14 local candidates for election. This \$50,000 consists of the following contributions reported by  
15 Respondents: \$10,000 reported received on July 7, 1998; \$15,000 reported received on April 29,  
16 1999; \$15,000 reported received on February 16, 2000; and \$10,000 reported received on March  
17 30, 2000.

18 7. Respondents returned \$50,000 to Fannie Mae on April 12, 2001.

19 8. Respondents deposited a \$250,000 contribution from Freddie Mac into the  
20 Republican National State Elections Committee account, reported as received on December 20,  
21 2001.

22 V. Respondents deposited \$50,000 from the Federal National Mortgage Association  
23 and \$250,000 from the Federal Home Loan Mortgage Corporation into the Republican National  
24 State Elections Committee account, in violation of 2 U.S.C. § 441b(a). Respondents will cease  
25 and desist from violating 2 U.S.C. § 441b(a).

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1 VI. Respondents will pay a civil penalty to the Federal Election Commission in the  
2 amount of Ninety-Eight Thousand dollars (\$98,000) pursuant to 2 U.S.C. § 437g(a)(5)(A).

3 VII. The Commission, on request of anyone filing a complaint under 2 U.S.C.  
4 § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance  
5 with this agreement. If the Commission believes that this agreement, or any requirement thereof,  
6 has been violated, it may institute a civil action for relief in the United States District Court for  
7 the District of Columbia.

8 VIII. This agreement shall become effective as of the date that all parties hereto have  
9 executed same and the Commission has approved the entire agreement.

10 IX. Respondents shall have no more than 30 days from the date this agreement becomes  
11 effective to comply with and implement the requirements contained in this agreement and to so  
12 notify the Commission.

13 X. This Conciliation Agreement constitutes the entire agreement between the parties on  
14 the matters raised herein, and no other statement, promise, or agreement, either written or oral,  
15

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1 made by either party or by agents of either party, that is not contained in this written agreement  
2 shall be enforceable.

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4  
5 FOR THE COMMISSION:

6  
7 Lawrence H. Norton  
8 General Counsel  
9

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11  
12 BY:

13 Rhonda J. Vosdingh  
14 Rhonda J. Vosdingh  
15 Associate General Counsel  
16 for Enforcement

Date

2/8/04

17 FOR THE RESPONDENTS:

18  
19 Charles R. Spies  
20 Charles R. Spies  
21 Attorney for the Respondents  
22  
23

Date

1/5/04

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